IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No.65 of 2002.

Date of Decision: 16. 7. 2007.

Hem Chand and another. Petitioners.

Versus

Prem Chand Verma. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh , J.

Whether approved for reporting? No.

For the petitioners : Shri Bimal Gupta Advocate.

For the respondent : Shri K. D. Sood, Advocate.

Surinder Singh, J (oral)

Respondent Prem Chand is admittedly a tenant under the present petitioners in shop measuring 16' x 12' in ward No. 4, House No. 57 in Shamsherpur, Paonta Sahib.

The petitioners had filed a petition under Section 14 of the H.P. Rent Control Act, against the tenant aforesaid on the grounds :

(i) arrears of rent with effect from July 1991 at the rate of rupees 400/- per month (ii) respondent-tenant was running a printing press as a result of which cracks developed on the walls and the tenant has constructed a 'Parchhati' in the shop whereby committed such an act which has impaired the value and utility of the shop, (iii) that running of the printing press has caused nuisance to the occupants of the building in the neighborhood and Petitioner-landlords were unable to lead a normal life and ordinary comforts.

The respondent-tenant has offered strong resistance to the eviction petition.

Learned Rent Controller had framed the relevant issues arising out of the pleadings of the parties and ultimately held that respondent (tenant) was in arrears of rent to the tune of rupees 11, 400/- at the rate of rupees 300/- per

month with effect from July, 1991 and with respect to issue No.2 and 3, the findings were returned against the petitioners (landlords) consequently, the petition was allowed only on the ground of arrears of rent to the tune of rupees 11, 400/- as on 30.9.2000 and the said tenant was directed to vacate the premises after thirty days. In case, the amount is paid, ejectment shall not take place.

Feeling aggrieved and dis-satisfied by the impugned order of ejectment, the landlords had filed the appeal before the Appellate Authority. During the pendency of that appeal, an application was also moved on 27-8-2001 under Order 26 rule 9 of the Code of Civil Procedure for appointment of the Local Commissioner, i.e, an expert/Engineer or some competent person to prepare the map, showing the measurement of the "Parchhati" etc., as the respondent-tenant had constructed 'parchhati' after breaking the walls consequently, cracks were developed in the shop which has weakened the structure. Though the petitioners-landlords had led their evidence to this effect but spot was required to be visited by an expert. This report was necessary to determine the real controversy inter-se parties in appeal and no prejudice would be caused to the respondent.

Reply to the said application was filed by the tenant on 24.9.2001. The application was resisted and contested by the respondent (tenant) denying the allegations on the ground that the landlords had raised the construction of the second storey of the shop in question and the steel guarders etc., were put to give support and strength to the second storey. The report of the technical expert could have been obtained by the landlords before filing the petition and no evidence was led to that effect. The application was moved on malafide grounds and was moved to fill up lacunae in the case.

The appellate authority had fixed the application u/o 26 rule 9 CPC for consideration on 17.10.2001 on which date, the time was prayed for arguments and then it was adjourned from time to time for one reason or the

other till 28.12.2001 on which date the appeal was partly allowed without deciding the application under Order 26 rule 9, C.P.C.

Now the petitioners have inter alia taken various grounds in this revision petition that the Appellate Authority did not decide the application aforesaid which has caused prejudice to them.

Shri K.D. Sood, learned counsel for the defendant-tenant has frankly conceded and rightly so that the lower appellate Court had missed to decide the application aforesaid.

In fact, the question of appointment of Local Commissioner does not depend merely whether any prejudice will be caused to the other side, instead there should be sufficient basis and justification as also the effective need for the same which fact was required to be decided by Appellate Authority before whom the said application was moved. The lower appellate Authority has no option but to have disposed of the said application either before or at the time of final hearing of the appeal. However, it had no authority much less jurisdiction to have not decided it. Unfortunately due to this lapse on the part of the lower appellate Authority, the matter got further delayed. Since the application aforesaid remained undecided, therefore, in my considered opinion, the matter has to be remanded back for the decision on the application under Order 26 R. 9 C.P.C. by the appellate authority.

Accordingly, on this short ground, without going into the merits of the case, in view of the aforesaid discussion, the order of the appellate Authority passed in rent appeal No. 43-RA/14 of 2000 decided on 29.12.2001 is hereby set aside and the case is remanded back to the appellate Authority to give a decision on application, moved under order 26 rule 9 of the Code of Civil Procedure, after hearing the parties in the light of the above observations. The parties are hereby directed to be present through their counsel before the Appellate Authority Sirmaur at Nahan on 31-8-2007. Keeping in view the age

of the case, every endeavor shall be made by the first Appellate Authority to finally dispose of the main case on or before 30.10.2007.

The Registry of the High Court shall send the record of the Rent Controller and Appellate Authority to the appellate Authority Sirmaur at Nahan so as to reach there well before the date fixed.

No order as to cost.

The matter is accordingly disposed of.

(Surinder Singh)
Judge.

July 16, 2007.
(bm)